1 **OLIVA & ASSOCIATES ALC** Joseph L. Oliva, Esq., State Bar No. 113889 2 11770 Bernardo Plaza Court, Suite 350 San Diego, California 92128 3 Telephone: (858) 385-0491 Facsimile: (858) 385-0499 4 Attorney for Defendant, 5

DEPENDABLE SHEET METAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FAIRMONT SPECIALTY INSURANCE COMPANY, a Delaware corporation; and TIG INSURANCE COMPANY, a California corporation,

Plaintiffs,

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INSURANCE CORPORATION OF NEW YORK, a New York corporation; DEPENDABLE SHEET METAL, a California corporation; and DOES 1 through 10,

Defendants.

CASE NO.: C07-03421 VRW

DECLARATION OF JOSEPH L. OLIVA IN SUPPORT OF DEFENDANT **DEPENDABLE SHEET METAL'S** MOTION TO REMAND

[28 USC §1447]

SEPTEMBER 6, 2007 DATE:

2:00 P.M. TIME:

DEPT.: Courtroom 6, 17th Floor JUDGE: The Hon. Vaughn R. Walker

I. JOSEPH L. OLIVA, declare and state as follows:

- 1. I am an attorney licensed to practice before all the Courts of the State of California as well as the United States District Court-Northern District of California and am counsel of record for Defendant DEPENDABLE SHEET METAL (hereinafter referred to as "DEPENDABLE"). If called upon as a witness, I would competently testify to the facts contained in this Declaration, which facts are in my personal knowledge.
- 2. This Declaration is submitted in support of DEPENDABLE'S Motion to Remand this matter back to The Superior Court of the State of California-County of Contra Costa.

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- 3. Attached hereto as Exhibit "F" is a true and correct copy of Fairmont Specialty Insurance Company and TIG Insurance Company's Complaint, filed on May 29, 2007, in the Superior Court of the State of California, County of Contra Costa, Case No. C07 01170.
- 4. DEPENDABLE has prepared an Answer and a Counter-Claim which it is prepared to file in either State or Federal Court depending upon the outcome of its Motion to Remand. Out of an abundance of caution however DEPENDABLE has held off on filing its Answer and Counter-Claim while its Motion to Remand on grounds of jurisdiction is pending in order to avoid any potential argument by INSCORP that by filing either document DEPENDABLE has somehow waived its right to seek Remand.
- 5. Attached hereto as Exhibit "G" is a true and correct copy of DEPENDABLE'S Proposed Answer.
- 6. Attached hereto as Exhibit "H" is a true and correct copy of DEPENDABLE'S Proposed Counter-Claim.
- 7. Attached hereto as Exhibit "I" is a true and correct copy of a print-out obtained from the California Secretary of State's website showing that DEPENDABLE is a company organized and existing under the laws of the state of California.
- 8. Attached hereto as Exhibit "J" is a true and correct copy of a print-out obtained from the California Secretary of State's website showing that HDR INSURANCE MANAGERS, LLC, is a company organized and existing under the laws of the state of California.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this the 25th day of July, at San Diego, California.

Joseph L. Oliva